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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,970	10/31/2001	David A. Kuen	KCC 4760	6570

321 7590 06/04/2003

SENNIGER POWERS LEAVITT AND ROEDEL
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

STEPHENS, JACQUELINE F

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 06/04/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,970

Applicant(s)

KUEN ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on _____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 20-25 and 28-32 is/are allowed.
- 6) ☒ Claim(s) 1,8-10,14,16-19,26 and 27 is/are rejected.
- 7) ☐ Claim(s) 2-7,11-13,15 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 October 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2.
- 4) ☐ Interview Summary (PTO-413) Paper No(s) _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: *See Continuation Sheet*.

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference characters "69" and "71" have both been used to designate the medial surface of the containment flap 23 in Figure 4. Reference characters "171" and "169" have both been used to designate the lateral surface of the containment flap 123 in Figure 5.

Additionally, the specification describes the side panel 31 as being secured to the medial surface 69 by adhesive 75, page 20, lines 23-26. Figure 4 shows that the lateral surface 71 would be secured to side panel 31 by adhesive 75. The specification describes the elastic member 85 as being secured between the outer layer 81 and lateral surface 71 at the distal end 79, page 21, lines 26-28. Figure 4 does not show a lateral surface 71 at distal end 79.

The specification describes the outer layer 181 as being secured to the medial surface 169 by adhesive 191, page 25, lines 25-28. Figure 5 shows element 171 as between the outer layer 181 and adhesive 191. The specification describes seam 192 as being secured between the outer layer 181 and medial surface 169 at the distal end 179, page 27, lines 3-7. Figure 5 does not show medial surface 169 at distal end 179,

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities:
- the specification describes the side panel 31 as being secured to the medial surface 69 by adhesive 75, page 20, lines 23-26. Figure 4 shows that the lateral surface 71 would be secured to side panel 31 by adhesive 75,
 - the specification describes the elastic member 85 as being secured between the outer layer 81 and lateral surface 71 at the distal end 79, page 21, lines 26-28. Figure 4 does not show a lateral surface 71 at distal end 79,
 - the specification describes the outer layer 181 as being secured to the medial surface 169 by adhesive 191, page 25, lines 25-28. Figure 5 shows element 171 as between the outer layer 181 and adhesive 191,
 - the specification describes seam 192 as being secured between the outer layer 181 and medial surface 169 at the distal end 179, page 27, lines 3-7. Figure 5 does not show medial surface 169 at distal end 179,

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 8, 9, 10, 14, 16, 18, 19, 26, 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Palumbo et al. USPN 5899894.

As to claims 1, 8, and 26, Palumbo discloses a disposable absorbent article capable of being used as toilet training pants comprising an anterior side, a posterior side, and a crotch region disposed longitudinally there between, a central waist opening, and a pair of leg openings (Figures 1 and 3). The article further comprises a liquid permeable inner layer **7**, an outer layer **9** in opposed relation with the inner layer, and an absorbent body **6** disposed between the inner and outer layers. Palumbo further discloses a pair of flaps **11** having a base secured to the inner layer (at element **16**), and a distal end (examiner has designated as **D**, Figure 2) being movable relative to the base to where the distal end is spaced from the base portion (Figure 2). Palumbo further discloses the containment flaps comprise a first layer, examiner has designated as **A**, extending from the base to the distal end having a lateral surface (examiner had designated as **L**) and a medial surface (examiner has designated as **M**, Figure 2).

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Palumbo further discloses a liquid permeable second layer (examiner has designated as **B**) in opposed relation with the medial surface of the flap first layer. The second layer is free from fixed engagement with at least a portion of the medial surface of the flap first layer (Figure 2) to define a surge chamber there between (examiner has designated as **C**). The liquid permeable portion of the inner layer **7** is interposed between the surge chamber **C** and the absorbent body **6**, Figure 2.

As to claim 9, the flap second layer **B** is secured to the inner layer of the article in spaced relation with the flap first layer, Figure 2.

As to claim 10, see Figure 2 area examiner has designated as **C**.

As to claim 14, the second layer (examiner has designated as **B**) extends in opposed relation to the lateral surface of the first layer (at element 11), Figure 2.

As to claim 16, Palumbo discloses the flap second layer **B** is constructed of a nonwoven material (col. 4, lines 18-28).

As to claim 18, Palumbo discloses the flap second layer is constructed of a film, at least a portion of the film having apertures formed therein (col. 4, lines 18-35).

As to claims 19 and 27, Palumbo discloses the flap first layer is substantially liquid impermeable (col. 4, lines 36-40).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo in view of Kleinschmidt et al. USPN 6547773. Palumbo discloses the present invention substantially as claimed. However, Palumbo does not disclose the flap second layer is constructed of a spunbond polypropylene nonwoven web. Kleinschmidt discloses barrier cuffs comprising a spunbond polypropylene nonwoven web for the benefit of providing an adequate barrier for containment and softness for comfort (col. 2, lines 19-20 and col. 8, lines 11-33). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the leg cuffs of Palumbo to incorporate a spunbond polypropylene nonwoven web for the benefits disclosed in Kleinschmidt.

Allowable Subject Matter

7. Claims 20-24, 28, 29, and 30-32 are allowed.

8. Claims 2-7, 11-13, and 15 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



May 22, 2003



WEILUN LO
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700

Continuation of Attachment(s) 6). Other: USPN 5899894 with examiner markings for Figure 2.